

Statement of  
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on

Airport Deregulation

before the

House Committee on Transportation and Infrastructure  
Subcommittee on Aviation  
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Good morning, Mr. Chairman, and members of the Subcommittee. Thank you for inviting me to appear before you today to discuss various aspects of federal policy toward our Nation's airports. Airports play an essential role in our national economy, not only in the facilities and services they provide to air carriers and the traveling public, but also in terms of the jobs and business opportunities they create in their communities. At the federal level, we view our relationship with the Nation's airports as one that is best described as a partnership that has served the American public extremely well over the years. The Department, largely through the Federal Aviation Administration (FAA), works with state and local officials to ensure that airports are safe and environmentally sound, and that they have adequate financial resources to meet the growing demand for air travel.

As members of this Subcommittee are well aware, the September 11<sup>th</sup> attacks on America carried with them devastating economic consequences for the entire aviation sector, including airports. Air traffic fell precipitously and, at the same time, new security requirements were imposed on both air carriers and airports. The actions taken since 9/11, however, have made air travel safer and more secure than ever before. The airport community should be proud of the enormous contribution it has made to improve the safety and security of commercial aviation, and the foundation it has provided put this crucial industry on the road to recovery.

Despite the challenges of a post-9/11 security environment, airports have benefited substantially from the economic recovery of the past couple of years and the more recent growth in air travel. For example, in 2002 the 429 commercial service airports reported operating profits of \$4 billion. Economic recovery does present airports with new challenges, however. Thanks in part to the efforts of this Subcommittee, federal funds for airport infrastructure projects have increased by 69 percent over the last five years, but demand has also grown at a comparable pace. Today, the Airport Improvement Program (AIP) and passenger facility charge (PFC) programs together account for roughly 40% of total airport capital expenditures each year. The Department of Transportation is

committed to working closely with airport operators to ensure that the Nation's airport infrastructure needs continue to be met in a timely way.

In the years ahead, we will face more challenges as we work to ensure that we have sufficient airport and airspace capacity to meet whatever type and level of demand the market may bring. As Secretary Mineta noted at the FAA Forecast Conference just last week, demand is returning but in a very different form than before 9/11. Low-cost carriers have doubled their market share over the last few years, and continue to push legacy carriers to reduce costs, to offer lower prices, and to improve customer service. Having the infrastructure in place to ensure a competitive marketplace going forward will help us avoid congestion and accommodate new business models. That is why Secretary Mineta has launched a Next Generation Air Transportation System initiative, designed to transform our system between now and 2025 to ensure that it has the capacity and efficiency necessary to meet whatever demands the market may bring. We welcome the opportunity here today to engage in a dialogue about how we can work together with the airport community, airlines, and other stakeholders to develop a shared vision of our future and identify the tools we will need to achieve those common goals.

While my testimony provides significant detail regarding what the Department has done to carry out the statutory direction we have been provided by Congress in this area, I would like to first highlight just a few key points. Existing federal policies and programs governing airports have worked pretty well and continue to work well. Despite the fact that federal funds have restrictions attached to them, existing airport programs have considerable built-in flexibility, and the FAA has a demonstrated track record of working with airports to maximize their effectiveness. We want to use this hearing as an opportunity to discuss, in broad terms, the new policies that were adopted in the recently enacted aviation reauthorization legislation, Vision 100 – Century of Aviation Reauthorization Act (Vision 100) and how the FAA intends to implement them. Future challenges will clearly require creative approaches, especially given the growing demand for federal dollars. For that reason, we want to engage the airport community, now, in a dialogue that will both inform our implementation of Vision 100 and begin a process that will result in Administration proposals for the next reauthorization cycle.

#### Airport Improvement Program

Airport operators have repeatedly expressed their desire for more flexibility in the way that they can use AIP funds, ideally in the same way that they use airport revenues. We are happy to consider such changes to the program, and it is wise to start the debate about the successor to Vision 100 as early as possible. In order to do so, however, we must first understand more fully why airports believe that current requirements are unduly restrictive. In this regard, we encourage the airport community to bring us specific examples of the circumstances in which current AIP regulations have impeded sound financial planning or led to other inefficiencies.

Since the creation of the Federal Aid Airport program in 1946 through the latest reauthorization in Vision 100, federal assistance to airports has focused on the funding of capital development, planning, and noise mitigation. Within these broad parameters, AIP has

evolved over the years, in most cases with enhanced flexibility but in some cases with new requirements that were added when a specific need to protect the public interest was identified. For example, AIP grants were not originally available to finance terminal projects. Over time, eligibility expanded to permit first entitlement funding and later discretionary funding for terminal projects at some airports. Similarly, safety and security was not originally AIP eligible but it is today.

Vision 100 provides the latest example of AIP flexibility. The legislation includes many of the provisions that the Administration recommended in an effort to accord greater flexibility in the use of the non-primary entitlements. For example, Vision 100 extended the carryover period for unused non-primary entitlements from three years to four. It also allowed the pooling and sharing of non-primary entitlements among airports and gave airports the opportunity to use non-primary entitlements to fund revenue producing aviation facilities.

One area where AIP eligibility has been carefully limited over the years is in airport maintenance and operating costs. Since the program's inception, there have been only two cases where AIP eligibility has been expanded to cover such costs. Both of these exceptions were enacted in response to specific circumstances of financial need. The first – permitting use of AIP funds for pavement maintenance at our small airports – was enacted after we recognized that the smallest airports in our system struggle financially and therefore needed such assistance. The second, enacted after the attacks of September 11<sup>th</sup>, permitted airports to use AIP funds to pay for any costs associated with new security requirements imposed in response to those attacks for up to one year.

Finally, I would like to mention one other provision in Vision 100 that we supported and believe will have a beneficial impact on future airport planning. Section 187 requires that for projects at large- and medium-hub airports, the sponsor must provide information on the proposed changes to the airport layout plan to the local metropolitan planning organization (MPO). This provision is a small but important first step towards improving cooperation and connectivity among our different modes of transportation, especially when considering major infrastructure projects.

There are other, more profound policy questions that would need to be addressed if we were to consider fundamental changes in the character of the airport grant program. AIP grant dollars are not local, but are federal dollars generated by federally imposed user charges, and it is our responsibility in the Executive Branch to work with Congress to define the terms of use for these funds. Future reauthorizations of our federal programs will provide additional opportunities to refine those terms, but in doing so we must always remember our fundamental responsibility to consider the public interest in making any changes in the statutory framework of the AIP.

## Passenger Facility Charges

Passenger facility charges (PFCs) are also a substantial source of funding for airport capital development, especially at major airports. Unlike AIP grants, PFCs are local funds that are subject to a federal review process mandated by law. They are also subject to some restrictions on their use, the result of a carefully crafted compromise between the airport and airline communities when PFCs were first authorized in 1990. That compromise has been modified in small ways over the years but remains largely intact in the new Vision 100 legislation.

As with AIP, Vision 100 did provide some additional flexibility and reduction in procedural requirements for PFCs. For example, the law streamlines the federal review process by making the Federal Register public comment period optional and eases the requirement of consulting with airlines that have an insignificant presence at the airport. Changes such as these can reduce the time to process a PFC application by as much as two months. Further, the law includes a pilot program that will simplify the application process for non-hub airports, which typically have limited resources to handle a lengthy federal review process. Each of these changes was recommended by the Administration.

The Vision 100 legislation also expanded PFC eligibility for airports with a demonstrated financial need. Specifically, the law allows the Department to approve a PFC to pay the debt service on any airport project if we determine that the use of PFCs is necessary due to the airport's financial need. In the aftermath of the September 11 attacks, the FAA used its authority to administer the PFC program to provide emergency financial relief. In response to requests from airports that were experiencing cash-flow problems, the FAA instituted a program that allowed airports to "borrow" from their unliquidated PFC revenue account as long as they agreed to repay the account, with interest, within a specified timeframe. This program allowed airports to borrow at interest rates that were lower than what they would have received in the open market. If a similar emergency occurs in the future, the FAA has the option of resurrecting this program.

I hope this account makes clear the extent to which the Department and Congress have tried to accommodate the needs of airports in terms of their use of PFCs in the past, and will continue to do so in the future. Having said that, we do welcome further debate on these issues as we move to implement Vision 100 and lay the groundwork for new proposals in its successor legislation, and will ensure that all affected parties are included in those discussions.

## Airport Revenues

Airports are complex enterprises, as evidenced by the substantial expertise it takes to manage an airport authority's finances. Public policy in this area therefore must provide a basis for strong financial support for airports while ensuring fair access to airport facilities for users and taking into full account the effects of such policies on other members of the aviation community. Congress has outlined broad public policy direction both on the collection of

airport revenue—that is, airport rates and charges—and on the permissible uses of airport revenue.

Federal rates and charges policies define what an airport can charge the airlines and other users of the airport. A number of statutes spell out the underlying federal policy in this area. The Anti-Head Tax Act (49 U.S.C. § 40116) prohibits local taxation of air transportation, including imposition of unreasonable charges for use of the airport. As a condition of receiving AIP grants, an airport must also agree to provide access to the airport on reasonable conditions and without unjust discrimination, and to charge air carriers making similar use of the airport similar charges. (49 U.S.C. § 47107(a)(1).) An airport accepting an AIP grant must also agree that its rate structure makes the airport as self-sustaining as possible. This generally requires that an airport charge a market rate for any non-aeronautical use of airport land (49 U.S.C. § 47107(a)(13)(A)).

In implementing these statutes, the Department has encouraged airports to consult with users before adopting fees, to make the airport rate-setting process open and transparent to users, and to resolve any fee disputes locally if at all possible. In fact, the overwhelming majority of airport rates are set through negotiation with users or by local ordinance, without any Federal involvement, and result in rates consistent with congressional policy.

The Department's policy regarding what constitutes "reasonable conditions" permits an airport to recover all foreseeable costs of operating the airfield and other aeronautical facilities. Airports can bill users not only for capital and basic operating costs, but also amounts necessary for items such as debt service, bond coverage reserves, emergency reserves, environmental mitigation, security requirements, and support of the reliever airport system.

Two suggestions have been advanced by individual airports that would go beyond a straight recovery of costs. The first is market pricing for the airfield; the second is congestion pricing. One airport has attempted to charge airlines a commercial market rate for airfield real estate in its landing fees. The airport argued that it was simply charging for the "opportunity cost" of the airfield -- that is, the cost to the city of using the land as an airfield instead of some commercial use that would command a higher rent. In response to the airlines' challenge to that charge, the Secretary of Transportation found that the airport was not entitled to recover the opportunity cost of the airfield because the airport sponsor had given up the opportunity to use the land as anything but an airfield when it signed AIP grant agreements to obtain Federal funds. That decision was upheld in a 1999 review by the U.S. Court of Appeals for the D.C. Circuit.

The second suggestion for providing greater flexibility in levying airport charges is the use of congestion pricing, or peak period pricing. The Department has issued a request for comments on market-based demand management practices at airports. The FAA issued a related notice requesting comment on various market-based and administrative means of controlling congestion at LaGuardia Airport following the congestion experienced at that airport in the year 2000. The notices were issued in anticipation of the scheduled phase out of slots at LaGuardia in 2007. The Department has been reviewing the comments received, and

continues to study these issues. We will take all stakeholder views into account before making any specific recommendations for change in this area.

We appreciate the airport community's concerns about congestion, and I want to assure you that the Department is focused on this issue on many levels. The growing demand for air service will require us to consider new ways to manage the national airspace system, especially at and around heavily used airports. While there clearly are no easy solutions, we are committed to ensuring that we do not see a repeat of the congestion experienced in the summer of 2000. A prime example of that commitment is the action that Secretary Mineta and Administrator Blakey have taken in response to congestion at O'Hare. Through their leadership, we have reached agreement with United and American to reduce operations at the airport in the short run. That agreement was quickly followed by a *Growth Without Gridlock* conference chaired by the new head of our Air Traffic Organization, Russ Chew, where all the major aviation stakeholders agreed on specific actions that would help to alleviate congestion in our skies throughout the remainder of this year.

Turning back to airport revenue use, the FAA's current policy is intended to carry out a clear congressional mandate that airport revenue use be limited to the capital and operating expenses of the airport, the local airport system, and other local facilities owned or operated by an airport and directly and substantially related to air transportation of passengers or property. This requirement, which dates from the Airport and Airway Improvement Act of 1982, is intended not only to ensure the financial viability of airports in the long term, but also to prevent a "hidden tax" on air transportation through diversion of airport revenues to a local government's general fund. In each reauthorization since 1982, Congress has retained this requirement while enhancing the FAA's authority to enforce it.

For example, the 1994 and 1996 reauthorization acts:

- Required annual financial and revenue use reports from commercial airports;
- Enacted new civil penalty provisions applicable to revenue diversion;
- Identified specific practices that constitute revenue diversion;
- Added provisions to the Single Audit Act to require auditors' opinions on an airport's use of revenue;
- Directed that FAA publish a comprehensive statement of policy on use of airport revenue; and
- Applied revenue use requirements directly to all airports receiving Federal assistance, without regard to whether a current grant assurance was in effect (49 U.S.C. § 47133).

The FAA, in its 1999 Policy and Procedures on Use of Airport Revenue, sought to give clear guidance to airports on revenue use. The policy recognized that airport operators live in a complex regulatory and political environment, and that legitimate airport costs are broader than simply paying for airport facilities and basic operating expenses. For example, the policy statement permits modest contributions to local community groups and charities; it recognizes the airport's need for legal representation, advertising, lobbying, and air service promotion; and it permits the airport to contribute to local ground transportation projects directly benefiting the airport, on a pro rata basis. Such flexibility benefits the airport, airport

users and the surrounding communities, and has proven quite useful since this policy went into effect.

### Air Carrier Subsidies

Another important question for the Department and members of this committee is the issue of whether airports should be able to provide air carrier subsidies, even on a temporary basis. As you may know, the FAA is currently reviewing a petition that would allow airports to use airport revenue to make direct payments to an air carrier as an incentive to use the airport. More specifically, the Sarasota-Manatee Airport Authority is urging the FAA to permit certain smaller airports to use airport revenues to subsidize air carrier service. The FAA's Revenue Use Policy permits temporary waivers of airport fees for promotion of new service, but does not permit use of airport revenue to subsidize air carriers, on the basis that carrier subsidies cannot be considered an operating cost of the airport. The Sarasota petition was recently published in the Federal Register, and the comment period closed on March 5<sup>th</sup>. We received a total of thirty-four comments, and those comments are currently under review.

### Grant Assurances

One other critical aspect of our work in overseeing airport financing is ensuring compliance with AIP grant assurances. A specific example of the complexities involved in that process is a case brought by the Naples Airport Authority regarding the assurance regarding reasonable access. In that case, the Authority has suggested that the reasonable access assurance should not have been applied in a way that prohibited it from banning Stage 2 aircraft at the Naples Airport. The Airport Noise Control Act of 1990 (ANCA) adopted new requirements for an airport access restriction by Stage 2 or Stage 3 aircraft, but did not repeal or supersede existing law. As a result, an airport proposing to restrict Stage 2 aircraft must not only meet the procedural requirements of ANCA, but also comply with the grant assurance obligation to provide access on reasonable, not unjustly discriminatory terms.

The Authority maintains that if it complied with ANCA, then the FAA should not (and even could not) have reviewed the ban on Stage 2 aircraft under the grant assurances. Put simply, we do not agree with that position, and have responded to the Authority's challenge in the U.S. court of appeals. Since the case is in litigation I will not go into any further detail. I should note, however, that the Naples case has presented a number of new issues to the FAA. Accordingly, we have decided to pursue a consolidation and clarification of the many sources of policy on noise and access for Stage 2 and Stage 3 aircraft, which should be helpful to other airport operators and users in the future. In addition, based on experience with the Naples case, the FAA has streamlined its review of proposed noise and access restrictions by consolidating the ANCA and grant assurance reviews into a single process.

We also understand that airport operators have questioned the need to retain all of the requirements currently imposed through AIP grant assurances. The vast majority of these assurances are required by statute, but we are always prepared to consider appropriate

adjustments and to review specific suggestions. Therefore, when we publish a notice in the Federal Register this summer to implement the new assurances required by Vision 100, we will also take that opportunity to solicit comment on all current assurances as well.

### Competition Plans

Earlier I talked about the changing face of the airline industry, and how competition, especially from low-cost carriers, is driving our legacy airlines to be more competitive. Section 40101 of Title 49, U.S. Code, provides statutory guidance to the Department in its oversight of airline competition. More specifically, that section requires us to consider several factors in the public interest as we develop regulations, including “encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.” One important tool that we use to promote airline competition is the requirement that certain airports file competition plan with the Department. Those plans provide important information about gate usage, access, and related issues.

By the late 1990s, it was clear to many airline analysts that vigorous airline competition could thrive only when all air carriers, incumbents and new entrants alike enjoyed equal access to essential airport facilities and services. They realized that the full benefits of deregulation could be realized only if all air carriers are able to compete with one another on fair and equal terms. Before Congress established the competition plan requirement as part of AIR-21, many air carriers, both large and small, raised legitimate concerns about their inability to lease gates and to gain access to some airports in a timely manner. They also expressed concerns about onerous conditions they were often asked to accept as a prerequisite to the leasing of gates, and the fees they were charged to sublease gates from incumbent carriers – even where the incumbents were not using their gates in the most efficient and cost-effective manner. The General Accounting Office, DOT, and other entities studied these issues and found that restrictive airport business practices clearly impeded airline competition.<sup>1</sup>

The AIR-21 competition plan program required large- and medium-hub airports at which one or two air carriers control more than 50 percent of the passenger boardings to provide the Secretary with information regarding conditions that affect the ability of carriers to serve these airports and to compete on equal terms with air carriers already serving them. These conditions include the availability of airport gates and related facilities, leasing and subleasing arrangements, gate use requirements, patterns of air service, gate assignment policy, financial constraints, airport controls over air and ground side capacity, whether an airport intends to build or acquire gates that would be used as common facilities, and fare levels (as compiled by DOT) compared to other large airports. In order to ensure that each

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<sup>1</sup> For example, FAA/OST Task Force Study, **Airport Business Practices And Their Impact on Airline Competition**, October 1999; General Accounting Office, **Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets**, October 1996; and Transportation Research Board (Special Report 255), **Entry and Competition in the U.S. Airline Industry: Issues and Opportunities**, 1999, pp. 117-123.

airport successfully implements its plan, the Secretary is required to review, from time to time, how plans are being implemented. The FAA, moreover, may not approve a PFC or execute an AIP grant unless an airport has submitted a written competition plan in keeping with the statutory requirements.

The Department's staff, specifically those in the FAA and the Office of the Secretary, devote a considerable amount of time to reviewing airport competition plans and offering suggestions, not requirements, as to what actions airport officials could take to reduce barriers to entry. The competition plan process provides an opportunity for us to provide guidance on best practices to promote robust airline competition. All of this, of course, is designed to benefit the traveling public, and is carried out with an eye towards minimizing the workload for airport operators. For example, in response to airport concerns about the regulatory burden imposed by the requirement, we have extended the filing period to once every eighteen months rather than once each calendar year.

Some have argued that the competition plan requirement is a significant and unnecessary regulatory burden. I can assure you, Mr. Chairman, that the Department goes to great lengths to minimize that burden. More importantly, however, we feel strongly that this requirement carries significant benefits in promoting airline competition. Everyone agrees that air carriers should be treated fairly. Airport policies and business practices should be designed in a way that ensures timely notice to all air carriers serving an airport when gates become available, and that there is no discrimination in the establishment of fees or conditions of service. When such policies and practices are in place, all carriers operating at an airport are in a position to compete on fair and equal terms.

Since the competition plan requirement has been in effect, we have seen reduced barriers to entry at many concentrated airports. I am submitting with my testimony this morning a paper that provides a list of many of the initiatives airport managers have adopted in response to the competition plan requirement. As of April 2003, low-cost competitors had gained entry or expanded service at 29 of the 38 covered airports, resulting in greater choices and lower fares for air travelers around the country. Let me mention just a few prominent examples. Several airports, such as Atlanta, Cincinnati, Dallas-Fort Worth, Houston, Minneapolis, Newark, Philadelphia, and San Francisco, are recapturing gates or moving away from long-term exclusive use leases in favor of shorter-term preferential use leases, often with use-or-lose provisions. Some are moving to common-use gates. Other airports (e.g., Newark and Cleveland) have recognized the need for a competition advocate to work closely with new entrant carriers during start-up periods and support their efforts to gain access. Some airports with existing long-term exclusive-use leases (e.g., Chicago O'Hare) have used airport discretionary funds to convert underused exclusive-use gates to common-use gates for new entrants or expanding carriers.

Some airports, like Cleveland and Dallas-Fort Worth, have modified their common-use gate protocol to incorporate more pro-competitive features for facilities allocation. Adopting a gate monitoring and management system has helped airports such as Chicago Midway facilitate requests for gate sharing during its capital improvement program and helped officials identify and resolve scheduling conflicts. Airports such as Cleveland and

Chicago Midway have also capped sublease fees and instituted pre-approval requirements of sublease terms. Finally, a few airports (e.g., Chicago O'Hare) are considering modifying majority-in-interest clauses to reduce their potential to impede construction of additional capacity in the future.

The case of Newark is worth exploring in a bit more detail. This airport, operated by the Port Authority of New York and New Jersey, has for many years been dominated by one carrier. In the late 1990's some carriers alleged that they were having a difficult time gaining access to the airport due to Newark's long-term, exclusive use, master use and lease agreements. The competition plan process, including our review procedures and meetings with Port Authority officials, encouraged the airport to try and accommodate new entrants more quickly, re-assert its authority over efficient gate utilization, recapture underused gates, maintain control of common-use gates and, where possible, seek to take back exclusive use gates for conversion to common-use.

During a 1999 Departmental review, we discovered that all of Newark's domestic gates were exclusively leased to signatory carriers and a significant amount of control over the gates had been ceded to the signatory airlines. The lease provisions did contain a clause empowering the airport to require a signatory airline to accommodate requesting airlines – a “forced accommodation” clause – but the airport's authority to enforce that clause was very limited. The airport could not invoke the forced accommodation clause until: (1) a requesting carrier contacted each signatory airline to arrange a voluntary accommodation, and (2) if unable to arrange voluntary accommodation, the requesting carrier obtained written denials of accommodation from each signatory airline. Once a requesting carrier provided such information to the Port Authority, the Port was required to provide a six-month advance notice of forced accommodation to the signatory carrier involved.

We determined that this forced accommodation clause process raised competitive issues and was inconsistent with the grant assurance under which airports are obligated by law to provide reasonable access to its facilities. In this case we determined that AirTran, a proposed new entrant, had been unable to obtain access to the airport in a fair and reasonable manner, and that the airport had no dispute resolution procedure in place to deal with its request. Ultimately, in response to a letter from the Department urging the airport to grant AirTran access, Newark officials did provide a sublease so the carrier could begin providing service.

Looking at it more broadly, Newark's first competition plan – for Fiscal Year 2000-2001 – indicated that the airport accommodated new entrants under the procedures described above. To its credit, the airport did state that it would consider reducing the six-month advance notice of forced accommodation to 90 days, and would develop a program to monitor utilization of its exclusive-use gates. By contrast, Newark's Fiscal Year 2004 competition plan update describes its gate utilization analysis, a decision to accommodate ATA and America West via a common use agreement, and its use of PFC funding for an expansion of Terminal A to help accommodate greater competition. The plan update also included a New Entrant handbook describing common use procedures they have put in place to maximize opportunities for incumbent carrier expansion or new entrant access by giving priority consideration to subtenant or new entrant airlines.

It is clear to me that in the case of Newark the competition plan review process has resulted in substantial benefits for airline passengers. There are numerous examples involving other airports that I could also cite, but the main point here is that competition plans have been – and will continue to be – an essential tool for ensuring airline competition at our Nation’s major airports.

Congress recently acted to strengthen federal efforts to promote airline competition. Vision 100 included a new grant assurance for all medium and large hub airports, called the “competition disclosure requirement,” that is designed to ensure that airports continue to adopt entry friendly policies. This grant assurance requires such airports to transmit a “competitive access” report on February 1 and August 1 of each year if, during the previous six month period, it had been unable to accommodate one or more requests by an air carrier for access to gates or other facilities. The report must describe the requests, explain why the requests could not be accommodated, and provide a time frame within which the airport will be able to accommodate the requests. This grant assurance is temporary, however, and expires on October 1, 2008.

The new grant assurance provides an additional tool for ensuring fair access to airport facilities, and specifically ties it to the release of federal grants. We are in the process of determining exactly how we will implement this provision, but intend to issue regulations to do that sometime this summer. While the requirements will be fairly straightforward for those airports that have been filing competition plans since passage of AIR-21, it will be new for those airports subject to this assurance but not covered by the competition plan requirement. For those airports, we may encourage the adoption of such practices as gate-use monitoring, appointment of a competitive access liaison, fair and transparent gate assignments and gate availability notification, and oversight of subleases and terms in order to facilitate access.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to address any questions and your colleagues may have.

# **AIRPORT COMPETITION PLANS**

## ***Highlights of Reported Actions to Reduce Barriers to Entry and Enhance Competitive Access***

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## I. AVAILABILITY OF GATES AND RELATED FACILITIES

### **Major Elements of Competition Plan**

- Number of gates available at the airport by lease arrangement.
- Samples of gate use monitoring charts.
- Description of the process for accommodating new service and for service by a new entrant.
- Description of any instances in which the PFC competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or has it caused such gates to become available to others.
- Policy regarding “recapturing” gates that are not being fully used.
- Resolution of any access complaints during the 12 months preceding the filing.
- Use/lose or use/share policies for gates and other facilities.
- Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport.
- Availability of an airport competitive access liaison for requesting carriers, including new entrants.
- The resolution of any complaints of denial of reasonable access by a new entrant or an air carrier seeking to expand service in the 12 months preceding the filing of the plan.

### **Significant Airport Responses**

- Asserting control over underutilized gates.
- Designating Competition Access committees.
- Adopting more entry-friendly leasing terms.
- Removing specific access protections for signatory carriers.
- Providing new entrants with informational packages regarding airport access.
- Monitoring gate use.
- Streamlining forced accommodation process.

### **Highlights of Recent Actions Reported by Individual Airports:**

Anchorage	Converted from exclusive to preferential leases upon expiration of exclusive leases; created Competitive Access Team; uses web site to publish gate utilization information.
Atlanta	Provides handbook with airport information to requesting carriers and is invoking recapture authority for unused facilities.
BWI	Developed Airline Accommodations Committee consisting of air service development, operations, planning and commercial management offices.
Burbank	Designates official as new entrant liaison and provides guidance package.
Cincinnati	Using Competition Plan Coordinator to develop procedures and time lines to respond in a timely manner to requests for accommodation.
Cleveland	Competition Task Force established to ensure implementation of competition plan and pursue expansion and growth options; will develop new entrant handbook; assigns Administrative Officer to each airline to monitor sublease activity, assess operational needs to ensure efficiency of use.
Detroit	Adopted a policy to override strict “exhaustion of efforts” clause in its lease provision by assisting a requesting carrier to ease any burden and reduce unnecessary delays associated with acquiring gates and related facilities when the airport is unable to provide those facilities.
Houston Hobby/Inter-continental	Renegotiated long-term, exclusive use leases to shorter term, preferential, minimum-use leases (at some terminals) with commitment on part of airport to facilitate inter-carrier accommodations upon request of interested airline; developed Welcome Letter package to include gate usage information and a general Dispute Resolution Policy Statement, as well as other pertinent information.

Milwaukee	Removed potential obstacle for accommodation that enabled a signatory carrier to refuse to accommodate a “direct competitor.”
Minneapolis	Undertook Competitive Marketing initiatives with low-fare carriers and created short-term gates with preferences for new entrant carriers; created new entrant package with plans to publish information package on web site.
Nashville	Streamlining exhaustion of efforts requirement by using web site to encourage new entrants to contact airport directly, assists carrier with voluntary accommodation and negotiations, under a timeline; intends to recapture vacant leased gates upon request of another carrier.
Newark	Initiated review of Master Airline leases, identified provisions enabling airport to regain more control over the use of gates; moved to recapture gates or to force accommodation on gates, based on utilization study; streamlined forced accommodation clause by removing an exhaustion of efforts; appointed New Entry Manager and developed New Entrant Airline Rights package.
Oakland	Installing common use ticketing equipment at ticket counters and gates so that all airlines operating there will use identical gate check-in and gate CUTE equipment, thereby providing maximum flexibility in assigning gates, even on a per flight basis, thereby increasing the opportunities for competition; provides Airline Entry Package and airport facilitates negotiations between requesting carriers and incumbents.
Providence	Facilitates gate sharing requests and will not enforce lease clause requiring requesting airline to contact all signatories.
Sacramento	Is formalizing gate availability information by preparing an Airline Information Package containing information on available gates, terms of access, and procedures for securing facilities for new service, to be made available on the airport’s web page and upon request.
Salt Lake City	Start Up Package provided to requesting carriers includes a gate utilization report summary, a statement about the airport’s dispute resolution practices, as well as other necessary information about operating at the airport.
San Antonio	Negotiated expiring lease to provide for preferential-use; Aviation Department assists requesting airlines in gaining access.
San Francisco	Invoked forced accommodation clause to ensure that temporary gate needs of new entrant airlines were met.
San Jose	Established a Tenant Liaison Committee to respond to requests for access within a reasonable time, gather appropriate information, meet with relevant airport personnel, provide gate utilization information to requesting airline, and act as an intermediary between prospective airline and incumbent airline to expedite accommodation; assigned Property Management personnel as first point of contact.
San Juan	Developing policy on gate use and monitoring requirements to be applied to all gates, drafting sublease guidelines and requirements, developing complaints and disputes resolution policy and developing a master lease incorporating the referenced policies and procedures.

## II. ARRANGE FOR LEASING AND SUBLEASING

### **Major Elements of Competition Plan**

- Whether a subleasing or handling arrangement with incumbent carrier is necessary.
- How the airports assists requesting airlines to obtain a sublease or handling arrangement.
- Airport oversight policies for sublease fees.
- Process by which availability of facilities for sublease or sharing is communicated to other interested carrier.
- Airport policies regarding sublease fees.
- How complaints by sub-tenants about excessive sublease fees are resolved.
- How independent contractors who want to provide such service as ground handling are accommodated.
- Formal dispute resolution procedure.

### **Significant Airport Responses**

- Beginning to develop dispute resolution process.
- Asserting more control and oversight over sublease fees, terms, and conditions.
- Imposing sublease caps on administrative fees.
- Reviewing and/or pre-approving subleases.
- Notifying carriers of gates available for subleases.

### **Highlights of Recent Actions Reported by Individual Airports:**

Albuquerque	Adopting dispute resolution procedures.
Anchorage	Requires airport approval and caps administrative fees; adopting dispute resolution procedures.
Atlanta	Adopting dispute resolution procedures.
Austin	Requires airport approval and caps administrative overhead fees.
BWI	Caps fees and requires airport approval.
Chicago O'Hare	Adopting dispute resolution procedures.
Chicago Midway	Gate committee is developing dispute resolution procedures for use on domestic gates.
Cleveland	Pre-approves subleases, caps fees; common-use gate protocol manages gate occupancy times and fines user for failure to comply; adopting dispute resolution procedures.
Dallas Love Field	Adopted a policy to cap sublease administrative fees.
Dallas-Fort Worth	Adopting dispute resolution procedures.
Denver	Adopting dispute resolution procedures.
Detroit	Caps sublease fees for forced accommodation arrangements; requires airport approval for subleases with new entrants; gate utilization policy assures that subtenant will not be disadvantaged by a schedule change of the tenant.
Houston Hobby/Inter-continental	Will initiate the development of a formal dispute resolution process.
Kahului	Requires pre-approval of a sublease and discourages excessive sublease rents.

Memphis	Adopting dispute resolution procedures.
Newark	Is developing more formalized procedures for hearing complaints in addition to considering complaints at station manager or airlines affairs meetings.
Oakland	Requires airport manager's pre-approval for sublease or assignment; restricts amount of assigned space that may be assigned or sublet to another airline; caps fees.
Ontario	Is developing a Gate Use Committee to resolve disputes, set timeline for appeals
Palm Beach	Pre-approval required for subleases; airport has authority to recapture subleased facilities when they represent over 50% of the tenant's leasehold; caps administrative fees; adopting dispute resolution procedures.
Reno	Adopting dispute resolution procedures.
San Antonio	Adopting dispute resolution procedures.
Saint Louis	Airport consent required for subleases; ground-handling fees are subject to airport oversight; preferential-use sublease terms and fees subject to airport oversight; will address sublease markups in new airline use agreement.
San Jose	Developed an Airline Access Complaint form and established procedures for resolving complaints within a reasonable time. Also oversees sublease fees per revised lease and applies, as a matter of policy, sublease fee caps on subleases executed under older master lease.
San Francisco	Adopting dispute resolution procedures.
Washington Dulles	Requires prior approval of subleases and handling agreements; caps sublease fees.

### III. PATTERNS OF AIR SERVICE

<b>Major Elements of Competition Plan</b>	<ul style="list-style-type: none"> <li>• Markets serviced.</li> <li>• Small communities served.</li> <li>• Markets served by low-fare carrier.</li> <li>• New markets added or dropped in past year</li> </ul>
<b>Significant Airport Responses</b>	<ul style="list-style-type: none"> <li>• Using market analysis to add competitive services.</li> <li>• Using marketing tools to attract low-fare services.</li> </ul>
<b>Highlights of Recent Actions Reported by Individual Airports:</b>	
Albuquerque	Instituted New Entrant Promotional Program as an incentive to promote competition.
Charlotte	Performed a Competitive Air Service Assessment indicating possibilities for adding low fare carrier service on certain routes; implemented marketing plan to attract additional service.
Palm Beach	Eliminated surcharge on use of common-use gates for a seasonal or temporary basis; is conducting an "air service enhancement campaign" to increase the air service opportunities available at its airport and to enhance the revenue-generating opportunities for airlines.

Pittsburgh	Provides Airline Information Package; adopted Air Service Marketing Incentive Program to encourage new and competitive air service for existing and new carriers.
Reno	New Airline Incentive Policy implemented; Business Development and Property Administration Division coordinates the accommodation of services and facilities for new entrants, including assisting in negotiations with incumbent signatory airlines and participation in incentive programs.

#### IV. GATE ASSIGNMENT POLICY

**Major Elements of Competition Plan**

- Method of informing carriers of gate assignment policy.
- Methods for announcing to carriers when gates become available.
- Policies on assigning RON positions.

**Significant Airport Responses**

- Adopting gate assignment protocols with consideration for new entrants.
- Changing signatory policies to lessen burdens on new entrants.
- Notifying all carriers of gate availability.

#### **Highlights of Recent Actions Reported by Individual Airports:**

Anchorage	Posts gate utilization information and availability on web site; is required to post public notice prior to leasing space.
Atlanta	Will add link to web site for tenant information; will post information on underused gates after gate use surveys.
BWI	Will revise policy to offer signatory status to any airline willing and qualified to assume substantially similar obligations as those required of a signatory carrier when, due to the physical space limitations at the airport, that airline is otherwise precluded from leasing a full complement of space. Also, will post gate/hold room availability information on its web page and will advertise announcements of gates.
Charlotte	Non-signatory/new entrant landing fee is the same as a signatory landing fee.
Chicago O'Hare	Notified all carriers by facsimile of availability of common-use gate.
Houston Inter-continental	Reassigned underused leased space to an incumbent air carrier for its expansion.
Miami	Prohibits carriers from controlling gate assignments and from transferring or assigning ticket counter positions; requires sharing of contiguous and under-utilized ticket counters.
Nashville	Will post information on gate availability on its web site.
Newark	Notified interested subtenant carriers of potential gate availability during Master Lease Utilization review process; adopted common use procedures (for use to resolve competing interests in a gate) with a priority to new entrants offering competitive services.
Oakland	Provides written notification to airlines as gates become available and includes estimate date of availability; requesting airlines must provide current and planned schedule information.

Philadelphia	Intends to assign new gates on basis of accommodating competitive airline service, considering, among other factors, whether airline is a “low fare” airline, nonstop markets, size of aircraft, frequency of operations, etc.
Pittsburgh	For PFC-financed gates, airport will give priority to new, competitive airline service; signatory fee status not dependent on minimum leasehold.
Phoenix	Is studying the development of contractual and/or regulatory tools to allow airport to better coordinate gate-sharing opportunities; provides gate use and schedule information to prospective entrant carriers; provides New Entrant Information package, containing gate utilization information, to prospective entrant to enable it to make informed decision on which incumbent air carriers to contact for shared gate agreements.
Sacramento	Replaced County ordinance gate assignment process with a lease agreement providing for short-term, preferential-use leases subject to airport reassignment; is developing Airline Information Package to be provided on airport’s web page.
Saint Louis	Signatory status is available to subtenants; gate assignment procedures will be published on web site; simultaneously advises all carriers of gate availability; will use its web site to publish relevant information for serving airport; is developing and placing timelines for access; City agent is contact point for City gates as well as facilitating sublease accommodation.

## V. GATE USE REQUIREMENT

<b>Major Elements of Competition Plan</b>	<ul style="list-style-type: none"> <li>• Gate use monitoring policy.</li> <li>• RON monitoring policy.</li> <li>• Requirement for signatory status.</li> <li>• Minimum requirements for a lease.</li> <li>• Accommodation priorities.</li> <li>• Common-use gate usage policies.</li> <li>• Methods for calculating rental rates for common-use gates.</li> </ul>
<b>Significant Airport Responses</b>	<ul style="list-style-type: none"> <li>• Developing per-gate use monitoring policies.</li> <li>• Making gate usage information available.</li> <li>• Adopting similar minimum utilization requirements for incumbent and new entrant carriers.</li> </ul>
<b>Highlights of Recent Actions Reported by Individual Airports:</b>	
Anchorage	Uses its newly installed Multi-User Flight Information Display System (MUFIDS) to identify space to fill specific requests as they arise and to determine which gate are subject to recapture; information is made available upon request and on web site; RON positions are monitored through ground handler.
Chicago Midway	Monitors gates on a per-gate basis to track airline compliance with preferential lease utilization requirements, implement shared-use provisions, develop gate use procedures, and analyze construction phasing, and develop utilization criteria. Also used to schedule airport services such as parking, custodial services, concessions and security.
Dallas-Fort Worth	Instituted formal Gate Monitoring and Reporting Procedures, under auspices of a Gate Monitoring Task Force, in support of PFC competitive access assurance, using FIDS-produced monthly gate activity reports and flight activity reports, for summary daily gate utilization activity by gate and terminal.

Denver	Will negotiate a narrower “preferential” gate availability window with its hubbing carrier and will review the use/lose provisions to ensure they are pro-competitive; drafted 5 Year Strategic Business Plan.
Detroit	Formulated a policy for (1) a gate allocation package that will chart scheduled daily and weekly departures per carrier and (2) an on-going gate monitoring program to determine whether minimum utilization is met.
Miami	Has an active gate-monitoring program to control gate assignments on a daily basis.
Minneapolis	Generates bimonthly gate plot based on scheduled gate usage, modified to reflect actual usage.
Oakland	Monitors gate usage and analyzes and maps flight schedules on a weekly basis to determine availability of space and minimum gate usage, for purposes of determining whether to exercise the 30 day revocation process for a preferential-use gate permit.
Palm Beach	Monitors common-use gate utilization and uses airline provided monthly reports and airport daily monitoring to oversee preferential-use gate usage to determine whether a reallocation of gates should be undertaken to better balance user needs with terminal capacity, and for marketing purposes, that is, identifying high demand or un-served demand markets.
Pittsburgh	Uses new software to monitor gate usage on all gates and to identify opportunities to accommodate new entrants and maximize facility utilization.
Phoenix	Performs periodic studies of flight schedules to monitor gate utilization; will use the studies to communicate gate availability to prospective entrant carriers and will incorporate it in new entrant airline packet; will also use studies to better manage and adjust operating schedules for terminal food beverage and retail concessions; will perform formal gate utilization analysis for each carrier when vacancy rates subside.
Providence	Monitors gate use relying on airline schedule information; uses this information to assist a new entrant in identifying a potential signatory carrier to accommodate it.
Saint Louis	Monitors average daily gate utilization through scheduled daily flight information supplied by airlines; requires monthly gate utilization report in each short term preferential use permit and for new master preferential lease to replace that expiring at year end 2005.

## VI. FINANCIAL CONSTRAINTS

### **Major Elements of Competition Plan**

- Major source of revenue for terminal projects.
- Use of PFCs for gates and related terminals.
- Availability of discretionary income for capital improvement projects.

### **Significant Airport Responses**

- Using discretionary income for gate projects.

### **Highlights of Recent Actions Reported by Individual Airports:**

Anchorage New Airline Operating Agreement permits airport to rate-base capital projects required to accommodate a new entrant or expanding airline, under certain conditions.

Chicago O'Hare Purchased exclusive-use gate with discretionary funds and converted it to common use.

## VII. AIRPORT CONTROLS OVER AIRSIDE AND GROUNDSPACE CAPACITY

### **Major Elements of Competition Plan**

- Majority-in-interest (MII) clauses covering projects.
- Projects delayed because MII clauses revoked.
- Plans to modify existing MII agreements.

### **Significant Airport Responses**

- Exempting capital projects necessary for competition from MII votes.

### **Highlights of Recent Actions Reported by Individual Airports:**

Nashville May consider, as not enforceable, an MII vote against a development project for the purposes of excluding competition, when the development project is necessary for the airport to meet its obligation to provide access on reasonable terms as required by the AIP assurances.

Providence Interprets MII clause that excludes from MII concurrence projects to comply with Federal requirements as permitting airport to construct terminal facilities to enhance competition without MII approval.

## VIII. AIRPORT INTENTIONS TO BUILD OR ACQUIRE GATES TO BE USED AS COMMON FACILITIES

- Major Elements of Competition Plan**
- Common-use gates available.
  - Common-use gates scheduled to be built.
  - International gates available for domestic use.
  - Fee differences between international gate use for domestic service and domestic gates.
  - Carrier reliance on common-use gates.

- Significant Airport Responses**
- Utilizing discretionary income to acquire common-use gates.
  - Adopting common-use gate fees comparable to fees charged for leaseholds.

### **Highlights of Recent Actions Reported by Individual Airports:**

Anchorage	Converted from exclusive to short-term preferential (subject to recapture) and common-use gates.
Atlanta	Recaptured a temporary exclusive-use gate for preferential use, and converted one underused preferential-use gate to a common-use gate.
BWI	Installing common use terminal equipment (CUTE) in all common-use gates to enhanced the ability of airlines to share gates and hold rooms thereby increasing airport capacity.
Chicago O'Hare	Converted exclusive-use gate to common use.
Cleveland	Adopted protocol for common use gate with priorities given for (a) use by existing carrier that does not lease a gate, (b) a new entrant, and (c) an carrier seeking to expand; would apply this protocol, as needed to exclusive-use gates. Three gates converted to common use; common use gate legislation passed by City; gate program management contract developed; protocol adopted.
Houston Hobby/Inter-continental	Use CUTE system at all ticket counters; IAH has constructed common-use/preferential-use gates; HOU has common-use gates and is developing a standard fee for any common gate use to charge separately for gate use, ticket counter, and common facility use to eliminate confusion in combined "per turn" rates).
Nashville	Has several common-use gates available for requesting carriers; airport will negotiate vacant gate recapture, upon request.
San Jose	Is developing a common use philosophy for the design of new and renovated passenger terminal facilities, including the use of plasma signs, generically sized gates to facilitate sharing, an integrated data system similar to CUTE II to be installed at ticket counters and gate podiums, and a shared baggage screening system.

## IX. AIRFARE LEVELS AS COMPARED TO OTHER LARGE AIRPORTS

### **Major Elements of Competition Plan**

- Carrier local passenger, average fare, market share and average passenger trip-length data.
- Data above compared to other airports.

### **Significant Airport Responses**

- Using fare data to illustrate competitive strength.
- Using market share data to attract new service.

### **Highlights of Recent Actions Reported by Individual Airports:**

Chicago O'Hare	Using fare data, actively tracks O'Hare's competitive position relative to other markets.
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Palm Beach	Using market share data to highlight market opportunities for new and incumbent carriers.
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30 Airports	Published Competition Plan, including market-share data, on web page.
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